IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WP(C).No. 37521 of 2007(P)

PETITIONER:

M.VELAMMAL, W/O. AZHAGIRI,
RESIDING AT THELUNGUTHARA, CHITTUR VILLAGE,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.H.BADARUDDIN

RESPONDENT:

MUTHU, S/O. VELAYUDHAN,
RESIDING AT THELUNGUTHARA, CHITTUR VILLAGE,
CHITTUR TALUK, PALAKKAD.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37521 OF 2007

Dated this the 18th day of December, 2007

J U D G M E N T

This writ petition is filed seeking for a direction to the Munsiff, Chittur to stop recording the delivery of property on the basis of report of the Amin and issue an order for restoring the property taken delivery from the petitioner to her actual possession and enjoyment. It is a case where this is the sixth tier of litigation. After a decree was obtained by the plaintiff in a case, a claim application was filed, which ended in dismissal as confirmed by the appellate court and reaffirmed by this court in Execution Second Appeal 11/07. It is true that there is an observation "in such circumstances, appeal is dismissed making it clear that dismissal of EA will not bar the appellant from seeking declaration of title to the property." Thereafter, on the basis of this observation, a suit was instituted and an injunction petition was filed. It was dismissed and against that a CMA is preferred and the court below has not granted an order of injunction. At that stage the original decree holder has moved the court for delivery of the property and the Amin has delivered the

property and the only thing remaining to be done is the administrative work of recording the delivery. The very prayer in the writ petition would reveal that there is a prayer to restore the property taken delivery from the petitioner to her actual possession. So, if ultimately the plaintiff succeeds in his declaratory suit under Section 144 CPC permits restoration and the remedy available for the writ petitioner is only that. At this stage, and it may not be proper for this court at all in the exercise of its jurisdiction under Article 227 of the Constitution of India to stall the decree passed by the competent court of law.

Therefore, the writ petition lacks merit and it is accordingly dismissed.

M.N.KRISHNAN, JUDGE

vps